

BEFORE THE SHORELINES HEARINGS BOARD  
STATE OF WASHINGTON

BAINBRIDGE ISLAND CONCERNED  
CITIZENS ("BICC"),

Appellant-Intervenor,

v.

State of Washington, DEPARTMENT  
OF ECOLOGY, CITY OF WINSLOW,  
and CAROL KING,

Respondents.

SHB NO. 87-53

FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER

On December 18, 1987, Carol King filed an appeal with the Shoreline Hearings Board ("Board") contesting the Department of Ecology's denial of a conditional use permit issued by the City of Winslow for a mixed use commercial building adjacent to the shoreline in Eagle Harbor, Winslow. On December 30, 1988, Bainbridge Island Concerned Citizens ("BICC") moved to intervene. The Board scheduled motions practice. Subsequently, on January 9, 1989, permittee King, the City of Winslow and the Department of Ecology ("DOE") filed a settlement. The Board

1 granted intervention and stated that the permit as then approved by DOE  
2 in the settlement, constituted the "project" on appeal. (For more  
3 procedural history, see "Order Granting Intervention and Denying  
4 Dismissal", February 28, 1989). The parties were realigned to reflect  
5 their current posture.

6 The hearing on the merits concluded on May 16, 1989 with the filing  
7 of closing argument. Testimony was heard on April 17, 1989 in Winslow  
8 and April 18, 1989 in Lacey. Present for the Board were members:  
9 Judith A. Bendor, Presiding; Wick Dufford, Chairman; Harold S.  
10 Zimmerman, Nancy Burnett, Robert C. Schofield and Richard Gidley.

11 Appellant BICC was represented by Attorney J. Richard Aramburu  
12 (Seattle). Respondent King was represented by Attorney Richard S.  
13 Oettinger of Reaugh Fischnaller & Oettinger (Seattle). Respondent DOE  
14 was represented by Assistant Attorney General Allen T. Miller, Jr.  
15 Court reporters with Gene Barker & Associates recorded the proceedings.

16 The Board and the parties went on the site visit the first hearing  
17 day.

18 Having reviewed the evidence and counsel's contentions, and being  
19 fully advised, the Board announced its decision on May 31, 1989, and  
20 requested respondent King to file a Proposed Order, which was done.  
21 The Findings of Fact, Conclusions of Law and Order herein confirm that  
22 decision, and is final for purposes of appeal. WAC 461-08-220.

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FINDINGS OF FACT

I

Respondent Carol King owns real property in the City of Winslow, Bainbridge Island (Kitsap County) Washington. The property is adjacent to Eagle Harbor, at the corner of Madison Avenue South and Parfitt Way. The property consists of approximately 17,000 square feet of upland ("Property"), and tidal property directly adjacent to the east ("tidal slough") 13,629 square feet.

The City owns real property ("sewer property") directly north of the King Property, which has a sewer lift station and a generator shed. Immediately to the north of the sewer property is a dry cleaning business.

A marina lies to the south of King's Property. To the west is Madison Avenue South and a public courtyard in the Madison Avenue street-end which directly overlooks Eagle Harbor and the Winslow Wharf marina. This "street-end courtyard" slightly encroaches over King's Property.

The King Property is surrounded by a steep, rocky, rip rap bulkhead. The Property is generally level, sloping slightly to the southern bulkhead. A large madrona tree grows on the west side of the Property along Madison Avenue. The Property is generally covered with low vegetation and a few small trees.

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II

Through a trusteeship set aside for her retirement Ms. King also has a parcel of real property catty corner from her Property. It is adjacent to parking for the Winslow Wharf Marina. The marina parking contains nine on-site parking stalls for Ms. King's proposed project.

III

The Property is in an area designated as "Urban Environment" by the Winslow Shoreline Management Plan ("WSMP") Section 16.12.570,, and is zoned commercial.

IV

Currently the public has panoramic, unimpeded views across the Property to the Harbor and the Bainbridge Island hills beyond. The views are from several vantage points: Madison Avenue South, Parfitt Way, the sidewalks and the Madison Avenue street-end courtyard. Views also exist from the publicly accessible Winslow Wharf parking area.

V

The City of Winslow is in the process of building a waterfront trail. Part of the trail is currently in place. Ample public paths (by easements) exist along the marina as part of the earlier Winslow Wharf shoreline permit. ("Winslow Wharf Permit"). The King Property lies between the City's waterfront trail to the northeast and the public easements along the marina to the southwest.

VI

King acquired the Property from the successor in interest to Winslow Wharf Company, Inc., by statutory warranty deed dated April 1, 1985, recorded April 12, 1985.

What is now the King Property is included within the much larger area encompassed by the Winslow Wharf Shoreline Permit. Some portions of the Winslow Wharf development were implemented under that permit, including the marina additions, the rehabilitation of several historic buildings for commercial use (with some water-oriented businesses) and with a restaurant, and public access easements along the marina. The portion involving the now-King Property was not developed before the Winslow Wharf permit expired on September 6, 1986.

Under that expired permit, two buildings were to be allowed on the Property: a 3,000 square foot restaurant with outside waterward path, and a 5,200 square foot commercial building. In addition, there was to be an array of public access including: an ample public access path waterward of the buildings with an extension of the Winslow waterfront trail from the footbridge across the tidal slough, connecting with the marina public easements, and a dinghy dock with a view deck. A new City park was proposed on part of the City's sewer property. No parking was proposed on the site of the now-King Property.

VII

The current King proposal includes a 9,000 square foot, 35 foot

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1 high two-story building, connected in an L-shape by a one story  
2 structure. The building would have a gabled roof, large windows, and a  
3 wood exterior. On the inside of the L on the landward side of the  
4 building is a courtyard ("interior courtyard") proposed for public  
5 access.

6 Twenty-seven on-site parking spaces are proposed, using the King  
7 Property and the southern half of the City's sewer property. Some of  
8 this parking is as close as six feet from the shoreline rip rap. There  
9 would be nine off-site parking spaces at the marina parking.

10 About 72% of the Property would be covered with the buildings and  
11 parking. King would deed to the City her portions of the Madison  
12 Avenue street-end courtyard and grant a public easement for an 85-foot  
13 long footbridge. The Winslow waterfront trail would continue from the  
14 footbridge by easement across the interior of King's Property  
15 terminating at the corner of Madison Avenue South and Parfitt Way  
16 ("Interior Path").

17 A four foot wide path would proceed from the footbridge eastward  
18 along the rip rap adjacent to the water and then proceed around the  
19 building to the south. ("Perimeter Path"). There it would connect  
20 with a courtyard at the southeast corner ("Perimeter Courtyard"),  
21 adjacent to the water and on King's property. This courtyard would  
22 connect with the Madison Avenue public street-end courtyard and to the  
23 marina public easements beyond.

1 Public access along the Perimeter Path and Courtyard would be  
2 allowed from 9 a.m. to sundown, with three foot wide gates providing  
3 security during closed times. There would be unimpeded water views  
4 from the Perimeter Path and Courtyard. There would not be wheelchair  
5 access to the Perimeter Path.

6 No dinghy dock or viewing platform is proposed. The proposed  
7 commercial building would block almost all existing public water  
8 views.<sup>1</sup> (See Findings of Fact IV, above.)

#### 9 VIII

10 Nearby buildings are two-story, and include retail establishments,  
11 a restaurant, and offices, located in buildings of historic vintage for  
12 Bainbridge Island.

#### 13 IX

14 The proposed building and a substantial amount of parking as  
15 currently designed, are almost entirely within the 50-foot setback from  
16 ordinary high water. Such uses and intrusion into the setback require  
17 a shoreline conditional use permit under the WSMP.

#### 18 X

19 We find that the access proposed via the Perimeter Path is  
20 uninviting and, thus, unlikely to be much used. The Path at four feet  
21 wide is very narrow, not sufficiently wide to allow two people to walk  
22

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23 <sup>1</sup> There would be a narrow water view from the Madison sidewalk near  
24 the sewer property, across the King parking area.

1 alongside each other with ease. Above and immediately adjacent to the  
2 Path would rise a 35 foot high building. To the other side would be  
3 the rip rap. The effect would be like balancing on a building's edge.

4 Further, the three-foot wide gates, even when open, would  
5 constrict the entrances and discourage access. (No access would be  
6 available when the gates were closed.) Moreover, this uninviting  
7 arrangement would admit no access at all to the wheelchair public.

8 We find that the proposed Perimeter Path is not likely to  
9 accomplish its purpose. As designed and approved, the Path would not  
10 effectively facilitate public access or provide the opportunity for  
11 substantial numbers of the people to enjoy the shorelines. As a  
12 result, this proposed commercial project, well within the setback,  
13 fails to minimize disruption of scenic views. We find further that  
14 the provision for a Perimeter Courtyard does not adequately address  
15 the problem posed by the substantial physical and visual access  
16 blockage caused by placing the building so close to the water's edge.

17 Based on the evidence we find that an eight foot wide Perimeter  
18 Path (including up to one foot of landscaping) and gateways no less  
19 than four feet wide, are the minimum necessary under the facts herein  
20 adequate to preserve the public's opportunity to enjoy the physical  
21 and aesthetic qualities of the shorelines. The effect would be to  
22 link the Winslow Waterfront trail with the marina public easements  
23 along a waterfront route, at an inviting width consistent with that  
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1 found in the marina. In so finding, we are aware that this eight foot  
2 width may to some extent affect the proposed parking. In addition, we  
3 find that handicapped people are part of the public deprived of access  
4 by this project and that access should be accorded to them as well as  
5 to others. We find such access to be feasible.

#### 6 XI

7 We find that the dinghy dock is no longer possible. Ms. King does  
8 not own the tidelands over which the dock and platform would be  
9 placed. Moreover, either a long ramp (at least 100' long) or an  
10 extensive stairway would be needed from the top of the bulkhead at the  
11 northeastern corner. The stairway would be aesthetically  
12 unappealing. The ramp has the potential to interfere with other boat  
13 navigation.

#### 14 XII

15 Appellants have urged an array of other measures, such as  
16 requiring two separate buildings only one story each. We decline to  
17 so basically redesign the building. We find appellants' other  
18 suggestions unpersuasive.

#### 19 XIII

20 Any Conclusion of Law deemed to be a Finding of Fact is hereby  
21 adopted as such. From these Findings of Fact, the Board makes these

#### 22 CONCLUSIONS OF LAW

#### 23 I

24 The Shorelines Hearings Board has jurisdiction over the parties

25  
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1 and the subject matter of this action. Appellants have the burden of  
2 proof.

## 3 II

4 Issuance of shoreline substantial development and conditional use  
5 permits for the King proposal are governed by the Shoreline Management  
6 Act ("SMA"; Chapt. 90.58 RCW), its regulations (Chapt. 173-14 RCW),  
7 and the Winslow Shoreline Master Program ("WSMP") as extant September  
8 1987 (codified at Chpt. 16.12 of the Winslow Municipal Code). RCW  
9 90.58.140(2)(b).

## 10 III

11 We conclude that the project, as designed and approved, fails to  
12 conform to the policies of the Shoreline Management Act as set forth  
13 in RCW 90.58.020 insofar as public access is concerned. The  
14 conditioning of the permit as provided in Finding of Fact X above will  
15 bring the project into compliance with these policies.

## 16 IV

17 The Property is within an "Urban Environment" designation, which  
18 is defined (in relevant part) under the WSMP at 16.12.570 as:

19 A [ . . . ] an area of intense modification of the  
20 natural systems caused by human activity with  
21 residential, commercial, and industrial uses.

22 The purpose of placing an area in an urban  
23 environment is to ensure the utilization of the area to  
24 be a multiplicity of intense human uses.

25 B. The use policies are as follows:

26 1. Any shoreline use, subject to specific use  
27 regulations concerning them should be permitted.

2. Public access should be encouraged. Where

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1 practical, various access points ought to be linked to  
2 nonmotorized transportation routes, such as bicycle and  
hiking paths.

3 The WSMP also states:

4 16.12.540 Public access.

5 It is the goal of this program to insure safe and  
6 convenient access for the public to publicly owned  
shorelines and insure that intrusions created by access  
will not endanger life, property or environment.

7 16.12.550 Circulation

8 It is the goal of this program to coordinate existing  
9 and proposed circulation routes and facilities with  
shoreline uses.

10 V

11 The Winslow Master Program (16.12.460) defines water dependent as  
12 "a use or activity which cannot exist in any other location due to the  
13 nature of its operation". The WSMP (16.12.470) defines water related  
14 as "a use or activity which does not require a waterfront location but  
15 depends upon the shoreline location for economic reasons." The King  
16 proposal fits neither of these definitions. The fact that commercial  
17 development is enhanced by proximity to the shoreline does not create  
18 a water-related use. Such a broad reading of the WSMP definition of  
19 water related would render the definition essentially meaningless.

20 VI

21 The proposal is for a non-water dependent, non-water related  
22 commercial development. The WSMP policies for commercial development  
23 provide that:

24 B. 1. Commercial development should be compatible

25  
26 FINAL FINDINGS OF FACT,  
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1 in design and scale to the area in which it is  
2 located.

3 2. Parking facilities should be placed inland  
4 away from the immediate water's edge and  
5 recreational beaches.

6 3. Commercial developments should be designed  
7 and maintained and existing ones improved and  
8 maintained in such a way as to minimize  
9 disruption of scenic views. 16.12.670(B)

## 10 VII

11 The WCSMP General Regulations for commercial development state:

### 12 C. General Regulations

13 1. Commercial developments which are dependent or related to  
14 the shoreline are allowed.

15 2. Commercial facilities should provide public access to  
16 shoreline areas when feasible, taking into consideration  
17 public safety, public health, and security.

18 3. Uses which are not shoreline dependent or related but  
19 which provide an opportunity for the community to have access  
20 to the shore shall be encouraged. These uses require a  
21 conditional use permit.

22 4. Uses that are not shoreline dependent or related and  
23 which do not provide for an opportunity for the community to  
24 have access to the shoreline may be allowed on a case-by-case  
25 basis subject to the general goals and policies for  
26 environments. These uses will require a conditional use  
27 permit.

5. Uses other than water dependent and water related to be  
located less than fifty feet from the ordinary high water  
mark shall require a conditional use permit. 16.12.670(B)

## 28 VIII

29 By virtue of WSMP 16.12.670(C)(5), the King proposal requires a  
30 conditional use permit because it is not a water dependent or water

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1 related use and is located less than 50 feet from the ordinary high  
2 water mark. The General Regulations encourage public access where  
3 feasible.

4 The objective of a shoreline conditional use permit under WSMP  
5 16.12.920 is:

6 A [ . . . ] to provide more control and flexibility  
7 for implementing the regulations of the Master Program.

8 B. Uses classified as subject to the issuance of a  
9 conditional use permit can be permitted only by  
10 meeting such performance standards that make the use  
as may be imposed thorough the approval process.

11 The State regulations on conditional use require such proposal to  
12 be consistent with, among other things, the master program policies.  
13 WAC 173-14-140(1)(A). The design and site use are to be compatible  
14 with other permitted uses within the area, are not to cause  
15 unreasonably adverse effects to shoreline environment, and the public  
16 interest is not to be substantially detrimentally affected. WAC  
17 173-14-140.

#### 18 IX

19 The parking proposed on the Property and sewer property is an  
20 accessory use to the commercial development. WSMP 16.12.010. Parking  
21 facilities are permitted when accessory to other permitted uses. WSMP  
22 16.12.750(D) and (E)(4).  
23

X

We conclude that the additional conditions specified herein (Finding of Fact X, above) resolve what would otherwise be an inconsistency with the policy of WSMP 16.12.670(B)(3), requiring that disruption of scenic views be minimized. WAC 173-14-140(1)(A).

We further conclude that this proposal, when thus further conditioned, is compatible with public access and circulation goals. WSMP 16.12.540-550 and General Regulations WSMP 16.12.670(C)(2). Such public access is necessary when a proposed conditional use (including parking) harms the public interest so substantially by intruding into required setback areas and blocking views from public areas. WAC 173-14-140(1)(e).

As conditioned herein, the proposal promotes the SMP policies and goals by providing water views and allowing the waterfront trail to be continuous. WSMP 16.12.670(B). Without those conditions the public interest would be substantially affected. WAC 173-14-140. As conditioned, Policy 16.12.670(B)(2) is further promoted by placing parking further back from the water's edge.

We conclude the development as so conditioned is compatible with other permitted uses in the area. WAC 173-14-140(1)(c); WCSMP 16.12.920(B).

XI

We are not persuaded, given current practical and legal

1 difficulties, and the substantial public access benefits otherwise  
2 gained, that the expired Winslow Wharf Permit compels this Board to  
3 require a dinghy dock and platform. Appellants have not cited  
4 persuasive authority for this proposition.

5 XII

6 The Board declines to address appellant's legal issue as to the  
7 propriety of the City's allowing public property to be used for  
8 private parking or the possible provision of compensation to  
9 Ms. King. These legal issues are beyond this Board's jurisdiction.  
10 RCW 90.58.180.

11 XIII

12 Appellants have cited no compelling authority for the proposition  
13 that permittee should be required to include retail concerns open to  
14 the public in addition to the office spaces. Moreover, given the  
15 enhanced public access reflected in this Order, such argument is even  
16 less persuasive.

17 XIV

18 Any Finding of Fact deemed to a Conclusion of Law is hereby  
19 adopted as such. From these Conclusions of Law, the Board enters this  
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26 FINAL FINDINGS OF FACT,  
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ORDER

A shoreline management substantial development permit and conditional use permit as issued to King, subject to compliance with the conditions set forth in Resolution No. 87-26, as further modified by the negotiated settlement among Winslow, DOE and King, and AS FURTHER MODIFIED by the following conditions, are AFFIRMED:

1. The Perimeter Path from the proposed footbridge around the commercial building's waterward sides shall be a minimum of eight feet in width (allowing up to one foot intrusion for landscaping). The gates' openings shall be designed proportionately but no less than four feet wide.

2. The Perimeter Path and Courtyard shall be fully accessible to the handicapped, including people in wheelchairs.

The permits are REMANDED for issuance in conformance with this Order, and for appropriate easements and recordation.

1 SO ORDERED this 21<sup>st</sup> day of July, 1989.

3 SHORELINES HEARINGS BOARD

4 Judith A. Bendor  
5 JUDITH A. BENDOR, Presiding

6 Wick Dufford  
7 WICK DUFFORD, Chairman

8 Harold S. Zimmerman  
9 HAROLD S. ZIMMERMAN, Member

10 Nancy Burnett  
11 NANCY BURNETT, Member

12 Robert C. Schofield  
13 ROBERT C. SCHOFIELD, Member

14 Richard Gidley  
15 RICHARD GIDLEY, Member